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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,394	11/07/2001	Robert G. Hummer JR.	HRD-100-A	2871
27187	7590	03/08/2005	EXAMINER	
BAKER & DANIELS 205 W. JEFFERSON BOULEVARD SUITE 250 SOUTH BEND, IN 46601			HWANG, VICTOR KENNY	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/008,394

Applicant(s)

HUMMER, ROBERT G.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-20, 22-24 and 26-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 and 24 is/are allowed.
- 6) ☒ Claim(s) 1, 7-9, 12, 19, 20, 26-30 and 32-37 is/are rejected.
- 7) ☒ Claim(s) 2-5, 10, 11, 13-18, 22 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claims 9, 19 and 20 is withdrawn in view of the newly discovered reference(s) to *Marcheschi* (WO 99/39778) and *Nielsen* (US Pat. 6,715,728 and US Appl. No. 09/872,973). Rejections based on the newly cited reference(s) follow.

2. Claims 23 and 24 are allowed.

3. Claims 2-5, 10, 11, 13-18, 22 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Drawings***

4. The drawings were received on December 06, 2004. These drawings are acceptable.

### ***Claim Objections***

5. Claim 22 is objected to because of the following informalities: on line 2, "21" presumably should be changed to 20, since claim 21 was cancelled. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 19, 20, 26-30 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by *Marcheschi* (WO 99/39778). *Marcheschi* discloses a weightlifting apparatus for supporting a dumbbell, the apparatus comprising a first and second side frames (see annotations on front page); a horizontal cross-support mechanism 12 extending between the first and second side frames; and a pair of dumbbell supports 52,54 laterally movably mounted on the cross-support mechanism. Positioning mechanisms comprising latch pins 15, define a laterally adjustable position along the cross-support mechanism. The latch comprises a plurality of spaced apertures 13 in the cross-support mechanism to releasably latch the dumbbell support in a

selected horizontally adjustable position along the cross-support mechanism. A cross-support mounting portion 17,19 is carried on each dumbbell support and movable along the cross-support mechanism.

With regards to claims 19 and 20, the dumbbell supports are both laterally and vertically movable relative to the first and second side frames; and the cross-support mechanism is a crossbar.

8. Claims 1, 7, 8 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by *Hayden*(US Pat. 5,924,964). *Hayden*'964 discloses a weightlifting apparatus for supporting a dumbbell, the apparatus comprising first and second side frames 31,32; an elevation adjustment mechanism 17,18 carried on the first and second side frames; a cross-support mechanism having collars 15,16 at opposite ends of the cross-support mechanism, and the collars being coupled to the elevation adjustment mechanism; and at least one dumbbell support 19,20 coupled to the cross-support mechanism for supporting a dumbbell in a plurality of different elevations and lateral positions. Note that a dumbbell 25 (Fig. 3) can be supported in a plurality of different lateral positions by changing the lateral position of the dumbbell within each dumbbell support, or a dumbbell can be located in either the first dumbbell support 19 or the second dumbbell support resulting in a changed lateral position of the dumbbell. The cross-support mechanism comprises a horizontal crossbar 21, the dumbbell supports 19,20 mounted on the crossbar. The dumbbell supports comprise crossbar mounting portions 11,12 movably adjustable along the crossbar 21 (see col. 2, lines 60-65).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 7-9, 12, 26, 27, 32-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Nielsen* (US Pat. Appl. No. 09/872,973, parent of US Pat. 6,715,728 B2) in view of *Desjardins* (US Pat. 4,729,561). *Nielsen*'973 discloses a pair of dumbbell supports 8 laterally movably mounted on a horizontal crossbar, cross-support mechanism 20 between first and second side frames of a weight bench. The hooks 12 are crossbar mounting portions that act as positioning mechanism to define a laterally adjustable position along the crossbar by latching to the crossbar in one of a plurality of positions along the crossbar.

*Nielsen*'973 does not disclose the first and second side frames (claims 1, 26 and 34); the horizontal crossbar actually extending between the first and second side frames (claims 1, 26 and 35); the crossbar being vertically movable to adjust its elevation relative to the first and second side frames (claims 1, 32 and 35); an elevation adjustment mechanism carried on the first and second side frames (claim 1); and collars at opposite ends of the crossbar and coupled to the elevation adjustment mechanism (claims 1, 33 and 37).

*Desjardins* discloses a weight bench 10 including bar cradles 70 for supporting a weight bar. The weight bench comprises first and second side frames 20 carrying elevation

adjustment mechanisms 68,76 for coupling with collars 74 of the bar cradles 70. *Desjardins* does not actually show the weight bar and its use as a crossbar for supporting dumbbells.

*Hayden'108* discloses a weight bench comprising bar cradles supporting a weight bar 20 extending between the bar cradles and side frames 22,23, the weight bar used as a crossbar for supporting dumbbells 21 on a dumbbell support 10.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the dumbbell supports of *Nielsen'973* with the weight bench including side frames and collars of *Desjardins* and a weight bar crossbar as taught by *Hayden'108*, since *Nielsen'973* teaches that the dumbbells supports are for use with the crossbar of a weight bench and *Desjardins* and *Hayden'108* disclose such equipment typical in the art.

### ***Response to Arguments***

11. Applicant's arguments, see pg. 16, lines 7-19, filed December 06, 2004, with respect to *Ammoscato et al.* have been fully considered and are persuasive. The rejection under 35 USC 102(b) of claims 1-4 has been withdrawn.

Applicant's arguments filed December 06, 2004, with respect to *Hayden'964* have been fully considered but they are not persuasive. *Hayden'964* discloses dumbbell supports that are vertically adjustable and support the dumbbell in a plurality of different lateral positions. The claim language does not require that the dumbbell supports be movable to different lateral positions, only that the dumbbell it supports be capable of being supported as such.

*Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence at this time is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
March 1, 2005

JEROME W. DONNELLY  
PRIMARY EXAMINER

